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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,591	12/21/2001	Herbert V. Joiner	NA11P063/01.305.01	4557

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EXAMINER
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WOO, RICHARD SUKYOON

ART UNIT	PAPER NUMBER
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3639

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/029,591

Applicant(s)

JOINER ET AL.

Examiner

Richard Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

- 1) 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- 2) Claims 1-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In Claims 1, 25 and 26, there is no significant recitation of the data processing system or calculating computer to perform the data processing operation in which there is a significant change in the data.

In Claims 9 and 28, the computer program itself cannot be directed to a practical application of the invention in the useful art to accomplish a concrete, useful, and tangible result. When the computer program is actually executed by the computer, the claimed subject matter produces a useful, concrete and tangible result.

In Claim 17, although the claim is directed to a system, "logic" is deemed to be the computer program and it cannot be directed to a practical application of the invention as cited above. The applicant must show the physical, structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

***Claim Rejections - 35 USC § 103***

- 3) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4) Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf et al. (US 6,278,694) in view of Turek et al. (US 6,021,439).

As for Claim 1, Wolf et al. discloses a method comprising:

(a) collecting network traffic information utilizing a plurality of agents (see Fig. 5A; col. 5, lines 12-62);

(b) consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents (see Fig. 1; col. 3, line 16 – col. 2, line 20); and

(c) reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly disclose the method including charging a fee for reporting based on a number of at least one of the agents, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the method includes collecting the information in the network and providing network analysis for a “fee” (col. 8, lines 38-45).

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the method of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of agents, the host controller and the zone controller, i.e. service fee for all the services) for a fee, as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 2, the modified Wolf et al. further discloses the method, including:

determining the reoccurring fee associated with the reporting based on the number of the agents (see Supra Fig. 1 of Wolf et al.).

As for Claim 3, the modified Wolf et al. further discloses the method including:

determining the reoccurring fee associated with the reporting based on the number of the host controllers (see Id.).

As for Claim 4, the modified Wolf et al. further discloses the method including:

determining the reoccurring fee associated with the reporting based on the number of the zone controllers (see Supra Claim 1).

As for Claim 7, the modified Wolf et al. further discloses the method including:

charging the user the reoccurring fee (see Id.).

As for Claim 8, the modified Wolf et al. further discloses the method including:

charging the user the recurring fee utilizing a network (it is obvious to charge the user the fee for utilizing a network).

As for Claim 9, Wolf et al. discloses a computer program product for charging for network analysis, comprising:

- (a) code for collecting network traffic information utilizing a plurality of agents (see Fig. 5A; col. 5, lines 12-62);
- (b) code for consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents (see Fig. 1; col. 3, line 16 – col. 2, line 20); and
- (c) code for reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly disclose the product including code for charging a fee for reporting based on a number of at least one of the agents, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the invention includes collecting the information in the network and providing network analysis for a "fee" (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the product of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of agents, the host controller and the zone controller, i.e. service fee for all the services) for a fee,

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as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 10, the modified Wolf et al. further discloses the product, including:

code for determining the reoccurring fee associated with the reporting based on the number of the agents (see Supra Fig. 1 of Wolf et al.).

As for Claim 11, the modified Wolf et al. further discloses the product including:

code for determining the reoccurring fee associated with the reporting based on the number of the host controllers (see Id.).

As for Claim 12, the modified Wolf et al. further discloses the product including:

code for determining the reoccurring fee associated with the reporting based on the number of the zone controllers (see Supra Claim 1).

As for Claim 15, the modified Wolf et al. further discloses the product including:

code for charging the user the reoccurring fee (see Id.).

As for Claim 16, the modified Wolf et al. further discloses the product including:

code for charging the user the recurring fee utilizing a network (it is obvious to charge the user the fee for utilizing a network).

As for Claim 17, Wolf et al. discloses a system comprising:

(a) logic for collecting network traffic information utilizing a plurality of agents (see Fig. 5A; col. 5, lines 12-62);

(b) logic for consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents (see Fig. 1; col. 3, line 16 – col. 2, line 20); and

(c) logic for reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly disclose the system including logic for charging a fee for reporting based on a number of at least one of the agents, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the invention includes collecting the information in the network and providing network analysis for a “fee” (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the system of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of agents, the host controller and the zone controller, i.e. service fee for all the services) for a fee, as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 18, the modified Wolf et al. further discloses the system, including:

logic for determining the reoccurring fee associated with the reporting based on the number of the agents (see Supra Fig. 1 of Wolf et al.).

As for Claim 19, the modified Wolf et al. further discloses the system including:

logic for determining the reoccurring fee associated with the reporting based on the number of the host controllers (see Id.).

As for Claim 20, the modified Wolf et al. further discloses the system including:

logic for determining the reoccurring fee associated with the reporting based on the number of the zone controllers (see Supra Claim 1).

As for Claim 23, the modified Wolf et al. further discloses the system including:

logic for charging the user the reoccurring fee (see Id.).

As for Claim 24, the modified Wolf et al. further discloses the system including:

logic for charging the user the recurring fee utilizing a network (it is obvious to charge the user the fee for utilizing a network).

As for Claim 25, Wolf et al. discloses a method comprising:

(a) collecting network traffic information utilizing a plurality of agents (see Fig. 5A; col. 5, lines 12-62);

(b) consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents (see Fig. 1; col. 3, line 16 – col. 2, line 20); and

(c) reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly disclose the method including charging a fee for reporting based on a number of at least one of the agents, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the method includes collecting the information in the network and providing network analysis for a "fee" (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the method of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of agents, the host controller and the zone controller, i.e. service fee for all the services) for a fee, as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 26, Wolf et al. discloses a method comprising:

(a) collecting network traffic information utilizing a plurality of information collectors (see Fig. 5A; col. 5, lines 12-62);

(b) consolidating the network traffic information utilizing a plurality of host controllers coupled to the information collectors (see Fig. 1; col. 3, line 16 – col. 2, line 20); and

(c) reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see *Id.*; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly disclose the method including charging a fee for reporting based on a number of at least one of the information collectors, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the method includes collecting the information in the network and providing network analysis for a "fee" (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the method of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of information collectors, the host controller and the zone controller, i.e. service fee for all the services) for a fee, as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 27, the modified method of Wolf et al. further discloses the method, wherein the fee is reoccurring.

As for Claim 28, Wolf et al. discloses a computer program product comprising:

(a) code for collecting network traffic information utilizing a plurality of information collectors (see Fig. 5A; col. 5, lines 12-62);

(b) code for consolidating the network traffic information utilizing a plurality of host controllers coupled to the information collectors (see Fig. 1; col. 3, line 16 – col. 2, line 20); and

(c) code for reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers (see Id.; Fig. 7A, 8 for the reporting).

However, Wolf et al. does not expressly disclose the product including code for charging a fee for reporting based on a number of at least one of the information collectors, the host controllers, and the zone controllers.

Turek et al. teaches, for a system and method for monitoring and collecting data in a computer network, that the method includes collecting the information in the network and providing network analysis for a "fee" (col. 8, lines 38-45).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the product of Wolf et al. such that the invention determines and provides the reporting of Wolf et al. (based on the number of information collectors, the host controller and the zone controller, i.e. service fee for all

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the services) for a fee, as taught by Turek et al., for the purpose of providing the reporting service provider with a business incentive to manage on behalf of one or more instrumented Web servers.

As for Claim 29, the modified product of Wolf et al. further discloses the product, wherein the fee is reoccurring.

### ***Conclusion***

5) The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 6,285,748 is cited to show a network traffic control system that generates traffic monitor information by monitoring the network traffic and controls the network traffic based on the traffic monitor information.

US 5,682,482 is cited to show a network architecture for enhanced support network services. The invention includes an operations gateway defined by a number of agents that take responsibility for accomplishing support system related functions.

US 6,539,427 is cited to show a network wherein at least a portion of the network elements report operating information relating to network conditions to a centralized data store.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Woo whose telephone number is 571-272-

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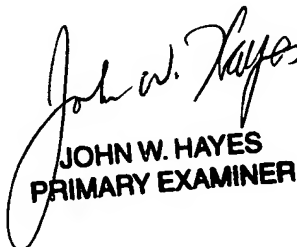
6813. The examiner can normally be reached on Monday-Friday from 8:30 AM -5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard Woo  
Patent Examiner  
Art Unit 3639  
June 24, 2005



JOHN W. HAYES  
PRIMARY EXAMINER